

SERVED: April 11, 2003

NTSB Order No. EA-5035

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 8th day of January, 2003

APPLICATION OF)	
)	
ESTAN FULLER, WILLIAM SCHWAB,)	
EDWARD KNAPP, and TIMOTHY GEHRES,)	Dockets 285-EAJA-SE-16202,
)	283-EAJA-SE-16212,
For an award of attorney fees)	282-EAJA-SE-16211,
and expenses under the)	and 284-EAJA-SE-16210
Equal Access to Justice Act)	
)	

ORDER

The Administrator has appealed from the Equal Access to Justice Act (EAJA) initial decision of Administrative Law Judge William R. Mullins, served on October 4, 2001.¹ The law judge granted in full the applicants' request for fees and expenses totaling \$44,638.78. For the reasons below, the appeal is dismissed.

Applicants were all contract pilots for Sunjet Aviation, Inc. After the crash of one of Sunjet's aircraft, the FAA and the Federal Bureau of Investigation initiated investigations of the carrier's operations. Training records were reviewed. Emergency orders of revocation were issued against applicants based on the Administrator's belief that applicants had intentionally falsified training certificates.

¹The initial decision is attached. The applicants filed a reply opposing the Administrator's appeal.

The law judge dismissed the complaints against all applicants, crediting their explanation and understandings. We affirmed, and the EAJA application, later granted by the law judge, followed. On consideration of the issues presented in the parties' briefs on the Administrator's appeal from the law judge's decision, the Board finds itself unable to reach a majority decision.² The initial decision will thus become the law of the case, without binding effect on the Board in future proceedings. See Rule 43, 49 C.F.R. § 821.43.

ACCORDINGLY, IT IS ORDERED THAT:

1. The Administrator's appeal is dismissed; and
2. The initial decision shall become final on service of this order.

CARMODY, Acting Chairman, and HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above order.

²Acting Chairman Carmody and Member Black would grant the Administrator's appeal, and Members Hammerschmidt and Goglia would deny it.